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No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE-FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,

Petitioners,

vs.

LOCAL 334, UNITED ASSOCIATION, etc., *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Question Presented

The Court of Appeals held that the District Court had no jurisdiction under Section 301(a) of the Labor Management Relations Act of 1947 because the instant case involved solely intra-union issues. Therefore, the question presented is whether Section 301(a) of the Labor Management Relations Act of 1947 grants jurisdiction to the United States District Courts in cases which involve solely intra-union issues.

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Counter-Statement of the Case

Local 334, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industries of the United States and Canada (herein "Local 334"), a labor organization representing employees for over seventy years, is affiliated with the United Association of Journey-

men and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (herein "United Association" or "Petitioner"), the parent international union. In August of 1977 the United Association issued an Order of Consolidation which affected nine locals affiliated with the United Association. The nine local unions were consolidated into three local unions.

On or about August 23, 1977, Local 334 filed an action in the Superior Court of New Jersey seeking to enjoin the United Association from removing Local 334's charter and seal and to order the United Associaiton to hold a full and fair hearing on Local 334's appeal from the August, 1977 Order of the United Association. Local 334 then filed an Amended Complaint requesting the court to enjoin the United Association from enforcing its Order of Consolidation. The matter was subsequently removed to the United States District Court for the District of New Jersey. In the United States District Court, Local 334 obtained a Temporary Restraining Order enjoining the enforcement of the Order of Consolidation. Subsequently, the court denied Local 334's request for a preliminary injunction. In November, 1977 and May, 1978 the United Association issued supplemental Orders of Consolidation.

The merits of the case were submitted to the District Court on cross-motions for summary judgment. Local 334 took the position that the United Association did not possess the authority, under the union constitution, to order the consolidation. In contrast, the United Association asserted that the union constitution expressly authorized it to order consolidations. The motion of Local 334 was joined in by all of the plaintiffs and, similarly, the United Association's motion was joined in by the remaining defendants.

In a letter opinion dated August 17, 1979, the District Court dismissed plaintiffs' complaint for lack of jurisdiction for failure to exhaust available administrative remedies. The court also held that, if it did have jurisdiction, summary judgment should be granted in favor of the defendants (See, P. App. 20a to 30a). An appropriate Order was entered on the same date. Local 334's Notice of Appeal was timely filed.

Prior to oral argument before the Court of Appeals for the Third Circuit, the court requested that the parties submit appropriate legal memoranda on the issue of subject matter jurisdiction under Section 301(a) of the Labor Management Relations Act of 1947. The jurisdictional issue was the sole subject of the oral argument. The Court of Appeals issued its decision on August 4, 1980, vacating the judgment of the District Court and remanding to the District Court. The District Court was ordered to remand the case to the State court (P. App. 19a).

The Court of Appeals based its decision on its finding that the dispute raised "solely intra-union issues" (P. App. 18a). The court held that the challenged consolidation "would not have a significant impact on labor-management relations or industrial peace" (P. App. 18a). The court thus rejected the contention of the United Association that, during the course of the lawsuit, Local 334 had alleged that its dispute with the United Association involved more than a mere intra-union conflict over the interpretation of the union constitution.

POINT I

The Courts of Appeals uniformly have held that jurisdiction is not present under Section 301(a) of the Labor Management Relations Act of 1947 in an internal union dispute which has no effect on labor-management relations.

There is no legal or factual issue present in the matter *sub judice* which deserves or requires this Court's attention. It has been universally recognized by the numerous courts which have discussed the issue of jurisdiction under Section 301(a) of the Labor Management Relations Act of 1947 (herein "Section 301(a)") that the statutory provision was not intended to result in the injection of the federal judiciary into intra-union disputes which have no impact or effect upon labor-management relations. As such, there is no significant federal question which this Court must decide. The federal courts at all levels have consistently and wisely rejected arguments, such as those made by petitioners, which would result in their becoming the managers, monitors, and arbitrators of purely intra-union disputes. The applicable decisional precedent is illustrative.

In *1119 D.C., National Union of Hospital and Health Care Employees* v. *National Union of Hospital and Health Care Employees,* 533 F.2d 1205 (D.C. Cir. 1976), the court held that a dispute between a local union and its parent, over the validity of a merger, in which there were no "concrete allegations of actual threats to industrial peace" was purely an intra-union dispute which did not provide a basis for the assertion of Section 301(a) jurisdiction. In similar fashion, the Tenth Circuit in *Smith* v. *United Mine Workers,* 493 F.2d 1241 (10th Cir. 1974) held that Section 301(a) jurisdiction was not present when the

> "controversy relates only to the construction and application of the union constitution and has nothing to do with labor-management relations."

Id. at 1243. The court's decision was based upon the governing congressional policy:

> "If Congress intended to turn over to the federal courts the control and supervision of internal union affairs which have no external application to industrial peace or to collective bargaining agreements, we believe that Congress would have said so explicitly. We agree with the Ninth Circuit that it was not the intent of the Congress for the courts to use the LMRA to police intra-union problems. Hotel & Restaurant Employees Local 400 v. Svacek, 9 Cir., 431 F.2d 705, 706."

Id. at 1243.

Similarly, in *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell,* 552 F.2d 1250 (7th Cir. 1977), cert. denied, 434 U.S. 862 (1977), it was noted that a federal court should be "chary" of becoming involved in "purely internal union disputes." *Id.* at 1254. The court held that it had Section 301(a) jurisdiction solely because there was a substantiated allegation that the dispute affected the labor-management relationship and was not a "mere intra-union organizational change." *Id.* at 1255. In *Stelling* v. *International Brotherhood of Electrical Workers,* 57 F.2d 1379 (9th Cir. 1978), cert. denied, 442 U.S. 944 (1979) the court acted consistently and predictably. It held that an intra-union controversy does not provide a basis for Section 301(a) jurisdiction if it does not affect "external labor relations." *Id.* at 1384. In addition, and most recently, the Fifth Circuit ruled that a controversy over the interpretation of a union constitution must have a significant impact upon the relationship between labor and manage-

ment in order for Section 301(a) to be properly asserted. See, *Alexander* v. *International Union of Operating Engineers,* 624 F.2d 1235 (5th Cir. 1980).

The foregoing discussion demonstrates beyond peradventure that the Courts of Appeals have recognized the clear Congressional policy and prohibition against becoming interjected into the huge arena of internal union disputes which have no impact on labor-management relations As this Court noted in *Retail Clerks* v. *Lion Dry Goods,* 369 U.S. 17 (1962), Section 301(a) jurisdiction is appropriate where a lawsuit is based on a contract which is "significant to the maintenance of labor peace." *Id.* at 28. The consistency with which all of the courts which have addressed the issue have ruled, compels the conclusion that there is no significant federal question which this Court must decide. The Congressional policy is manifest. It has been properly and uniformly applied and does not warrant this Court's time or attention.

Petitioners assert that there is a division among certain Courts of Appeals as to whether a union constitution is a "contract" within the meaning of Section 301(a). The Court of Appeals expressly and unequivocally stated that it did not decide that issue[1] and, similarly, this Court need not address that issue. Simply stated, once the Court of Appeals found that this case presented only an intra-union dispute, it was unnecessary to decide whether the union constitution is a "contract" within the meaning of Section 301(a).[2]

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[1] See P. App 11a n.13.

[2] The petitioners' assertion that a decision should have been made by the Third Circuit as to the meaning of the term "contract", as a practical matter, must be rejected. If the court had held that a union constitution *was not* a contract, Section 301(a) jurisdiction would not have been present. If it had held that the constitution *was* a contract, it would have examined whether the dispute affected labor-management relations and held, as it did without deciding the "contract" issue, that Section 301(a) jurisdiction was lacking on that basis.

POINT II

Consistent with the decisions of other Courts of Appeals, the Third Circuit Court of Appeals properly held that the facts did not support a finding of a significant impact on labor-management relations.

The petitioners' attempt to argue that the Court of Appeals did not act in a manner consistent with the decisions in *Local 1219, United Brotherhood of Carpenters* v. *United Brotherhood of Carpenters,* 493 F.2d 93 (1st Cir. 1974), and *Local 657, supra,* when it held that the facts and allegations in the present case did not support on labor-management relations. P.b. 12 to 14. More specifically, petitoners assert that the allegation, contained in Local 334's original complaint, stating that the Orders of Consolidation would affect the union referral lists and Local 334's contention, that the Orders of Consolidation would terminate Local 334's collective bargaining agreements, require a finding under *Local 1219 and Local 657* that Section 301 (a) jurisdiction is present. The petitioners' contention must be rejected.

The petitioners note that during the course of the proceedings before the District Court, Local 334 asserted that the Orders of Consolidation would reduce the work opportunities of its membership by requiring separate referral lists for the plumbers and pipefitters. Prior to the Orders of Consolidation, members of Local 334 had been placed on a single referral list and performed both plumbing and pipefitting duties. All of the allegations made by Local 334, referring to the reduction of work opportunities, specify harm solely to the referral lists which would be utilized under the Orders of Consolidation *by the local unions in* sending union members to particular jobs. The referral lists constitute nothing more than an internal

union device through which work opportunities are assigned. Employers have no input as to the manner in which the referral lists are comprised or administered. Such responsibilities rest solely within the authority of the unions.

The petitioners assert that the referral procedure "would not exist but for an employer-union agreement." P.b. 14. That does not persuade. Pursuant to collective bargaining agreements, a local union may agree to supply an employer with workers. However, the manner in which such referrals are made is solely within the discretion of the union. More importantly, the petitioners' contention must be rejected because it does not identify any allegation, substantiated or otherwise, which indicates that the labor-management relations between Local 334 and an employer would be or has been affected by the change in the system of referral. This is precisely because there has been no such effect. All of the Local 334 allegations and statements relating to a reduction in work opportunities claim injury only to the members of Local 334. In none of those statements or allegations is it asserted that the injury suffered by the members would transform itself into a strike, job action, a possible strike or job action, or any other activity which would impact upon the relationship between labor and management.

The petitioners rely upon Local *1219, supra,* for the proposition that an adverse effect upon referrals will provide a sufficient basis for the assertion of Section 301(a) subject-matter jurisdiction. The petitioners err. The court in *Local 1219, supra,* was never faced with the issue of what showing of impact was necessary in order to provide a basis for Section 301 subject-matter jurisdiction. The court merely made an inquiry as to whether the local union and parent union had ever entered into a "contract"

which covered the subject-matter of the dispute. The court, without ever mentioning the issue of impact, concluded that the parties did not have a contractual agreement and dismissed the action. *Id.* As such *Local 1219, supra,* does not provide support for the petitioners' contentions.

It is next asserted by the petitioners that the allegation made by Local 334, that its collective bargaining agreements would be terminated by the consolidation orders, somehow demonstrates impact upon labor-management relations. Although collective bargaining agreements were terminated under the Orders of Consolidation, no impact on labor-management relations was alleged nor did any impact result. As the Court of Appeals correctly noted, the Orders of Consolidation specifically provided that:

> "All contractual obligations of Local 334, including existing collective bargaining agreements, were to be assumed and carried out by Local 14 and 274" (emphasis added). P.App. 16a.

Clearly, although termination of the agreements did occur, there was no impact on labor-management relations. The covenants and conditions set forth in the agreements were properly carried out pursuant to the Orders of Consolidation. Petitioners' reliance on *Local 657,* is misplaced. Importantly, there was an allegation in *Local 657, supra,* which asserted that the contract termination would cause "immeasurable harm and interference" with the relationship between the local and the employers. In the present case, no such allegation has ever been made because the Orders of Consolidation, as described above, specifically required that the terms of all collective bargaining agreements to which Local 334 was a party be assumed and carried out by Locals 274 and 14.

It is undeniable that the Court of Appeals, consistent with all of the applicable decisional precedent, properly held that there were no allegations made or facts proffered which supported the petitioners' contention that the Orders of Consolidation affected labor-management relations. As such, there is no issue extant which this Court need decide.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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